

Code of Criminal Procedure 1975 – extract

Seizure of letters, disclosure of data contained in a message and survey of messages

Section 13. (1) The seizure of letters shall be permitted if it is necessary to clarify an intentionally committed offence under penalty of more than one year of imprisonment, and if the defendant is under arrest for such an offence, or his production or apprehension has been ordered for the same.

- (2) It shall be permitted to provide disclosure of the data contained in a message
 1. if and as long as there is the urgent suspicion that a person concerned by the information kidnap another person or take control over another person, and if the information is limited to the data of a message that let presume that they be transferred, received or sent by the defendant, at the moment of deprivation of liberty;
 2. if it is to be expected that the clarification of an intentionally committed offence under penalty of more than six months of imprisonment, be advanced in this way, and if the holder of the technical device that was or will be origin or destination of the transmission of a message has explicitly authorised such information; or
 3. if it is to be expected that the clarification of an intentionally committed offence under penalty of more than one year of imprisonment, be advanced in this way and, on the basis of determined facts, it is to be supposed that this will allow to identify data concerning the defendant.
- (3) The survey of message shall be permitted
 1. in the cases provided for in subsection 2, n. 1,
 2. in the cases provided for in subsection 2, n. 2, if the owner of the technical device that was or will be origin or destination of the transmission of a message has authorised the survey;
 3. if it seems necessary to clarify an intentionally committed offence under penalty of more than one year of imprisonment, or if otherwise the clarification or the prevention of offences committed or planned within the framework of a criminal or terroristic association or a criminal organisation (sections 278 to 278b StGB [= Austrian Criminal Code *Strafgesetzbuch*]) would be essentially complicated, and
 - a. if the holder of the technical device that was or will be origin or destination of the transmission of a message is urgently suspected of having committed an intentional offence under penalty of more than one year of imprisonment, or of having committed an offence under sections 278 to 278b StGB, or
 - b. if, on the grounds of determined facts, it is to be supposed that a person urgently suspected of the crime (lit. a) will use the technical device or establish a connection with it;
 4. if, on the grounds of determined facts it is to be expected that the place of abode of a fugitive or absent defendant urgently suspected of having committed an intentional offence under penalty of more than one year of imprisonment, might be ascertained.

Act on Copyright
(Federal Act concerning the copyright of works of literature and art and neighbouring rights) –
extracts

Main chapter III.
Assertion of the right.
Chapter I.
Rules of civil law.
Injunctive relief.

§ 81. (1) Anyone who has been injured in an exclusive right based on this Act, or has to dread such an injury, can sue for omission. The owner of an enterprise can be sued for this also if such an injury has been or impends to be committed in the business of his enterprise by a staff member or by a mandatary; section 81, subsection 1a shall apply *mutatis mutandis*.

(1a) If the persons having committed such an injury or impending to commit such an injury avail themselves of the service of an intermediary, the latter can also be sued for omission under subsection 1. If the latter complies with the conditions of an exclusion of liability under sections 13 to 17 ECG [Austrian Act on E-Commerce *E-Commerce-Gesetz*], the lawsuit can be filed against him only after a cease-and-desist-letter.

Claim for removal.

§ 82. (1) Anyone who has been injured in one of the exclusive rights based on this Act can ask to remove the unlawful state; section 81 subsection 1a shall apply *mutatis mutandis*.

[...]

(6) The claim for removal shall affect the owners of the objects subject to the measures aiming to remove the unlawful state. The claim can be put forward for the duration of the injured right as long as such objects exist.

[...]

Publication of the judgement.

§ 85. (1) If a lawsuit is filed for an omission or for removal or ascertainment for the existence or inexistence of an exclusive right based on this Act or for copyright (§ 19), the court of law shall have to adjudicate to the prevailing party, if this party has a legal interest to do so, upon application the authority to publish the judgement within a set term, at the expense of the opposing party. The kind of publication shall have to be fixed in the judgement.

(2) The publication shall comprise the verdict. Upon application of the prevailing party the court can however determine the contents of the publication varying or integrating the extent or the wording of the verdict. The application shall have to be filed at the latest four weeks after the unappealability of the judgment. If the application has been filed only after the closure of the court hearing, the court of first instance shall have to rule on it in a decision to be issued after the unappealability of the judgement.

(3) The court of first instance shall have to fix the expense of the publication, upon application of the prevailing party, and charge the opposing party with the reimbursement of these costs.

(4) The publication on the grounds of an unappealable judgement or of another enforceable title of execution shall have to be done by the media entrepreneur without any unnecessary delay.

[...]

Claim for disclosure.

§ 87b. (1) Anyone who within the domestic territory distributes work pieces, the right of distribution by placing on the market of which has expired in a Member State of the European Community or in a contracting state of the European Economic Area (§ 16, subsection 3), shall have to inform correctly and completely the entitled party, on demand, about the producer, the contents, the country of origin and the quantity of the distributed work pieces. The right to disclosure shall compete to the person entitled to distribute the work pieces within the domestic territory at the moment of expiration.

(2) Anyone who has been injured in an exclusive right based on this Act can ask disclosure of the origin and the ways of distribution of the infringing goods and services, if this is not out of proportion, compared to the seriousness of the injure, and if it does not violate legal duties to observe the secrecy; information shall have to be provided by the infringer and by the persons who

1. have possessed the infringing goods for business purposes;
2. have made use of the infringing services or have supplied services used for infringements of the right.

(2a) The obligation to provide information in terms of subsection 2 comprises, as far as appropriate,

1. the names and addresses of the producers, distributors, suppliers and other previous possessors of the goods and services, as well as those of the commercial purchasers and selling points for that they were destined;
2. the quantities of the goods produced, delivered, received or ordered, and the prices paid for the goods or services.

(3) The intermediaries in terms of § 81, subsection 1a, shall have to provide, on the written and sufficiently motivated request of the injured person, information to the latter about the identity of the infringer (name and address), respectively the information necessary to identify the infringer. The motivation shall have to contain in particular sufficiently concretised indications concerning the facts, on the grounds of the suspicion of the infringement. The infringed person shall have to reimburse the intermediary of the reasonable costs for information.

(4) The representatives of the market of art involved in an alienation submitted to the *droit de suite* in terms of § 16b, subsection 2, shall have to give to the entitled party on demand correct and complete information that might be necessary to secure the payment following this alienation. The claim will expire if information is not requested within a period of three years following the further alienation.

Interlocutory injunctions

§ 87c.(1) With reference to claims for omission, removal, appropriate compensation, damages and surrender of gain, provided by this Act, interlocutory injunctions can be issued to secure the claim itself as well as to secure evidence.

[...]

(3) To secure claims for omission and removal, interlocutory injunctions can be issued even if the conditions provided by section 381 of the Austrian Law on execution [Exekutionsordnung] do not apply.

(4) Interlocutory injunctions in terms of subsection 1 shall have to be issued upon application of the endangered party, without hearing the opposing party, if the endangered party, due to delay, risks to incur an irreparable loss or if there is the imminent danger to destroy evidence.

Act on Trademark protection

§ 51 of the Act on Trademark protection. Anyone injured in a right depending on a trademark, or having to fear such injury, can sue for omission.

§ 52 of the Act on Trademark protection. (1) The trademark infringer shall be obliged to remove the unlawful state.

[...]

§ 54. (1) The possessor of an enterprise can be sued for omission (§ 51) if a trademark infringement is committed or impends to be committed in the business of his enterprise by a staff member or by a mandatary. He shall be obliged to provide removal (§ 52) if he is the proprietor of the objects of the means of the infringement.

§ 55. In other respects § 119, subsection 2 (exclusion of the general public), § 149 (publication of the judgement), § 151 (accounting) and § 154 (prescription) of the Patents Act [Patentgesetz] of 1970, BGBl. [Austrian law gazette] 259, shall apply *mutatis mutandis*.

[...]

§ 56. (1) With reference to claims for omission, removal, appropriate compensation, damages and surrender of gain, provided by this Act, interlocutory injunctions can be issued to secure the claim itself as well as to secure evidence. However, an interlocutory injunction based on a trademark registered for more than five years may be issued only if it is shown credibly that the reason of cancellation in terms of § 33a does not exist.

[...]

(3) To secure claims for omission and removal, interlocutory injunctions can be issued even if the conditions provided by section 381 of the Austrian Law on execution [Exekutionsordnung] do not apply.

(4) Interlocutory injunctions in terms of subsection 1 shall have to be issued upon application of the endangered party, without hearing the opposing party, if the endangered party, due to delay, risks to incur an irreparable loss or if there is the imminent danger to destroy evidence.